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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,246	07/25/2003	Garry Tsaor		4189

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JOE NIEH
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WALNUT, CA 91789

EXAMINER

WALCZAK, DAVID J

ART UNIT	PAPER NUMBER
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3751

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/17/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/627,246

Applicant(s)

TSAUR, GARRY

Examiner

David J. Walczak

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4 and 7-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9-13 is/are allowed.
- 6) ☒ Claim(s) 1,2,4,7 and 8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4, 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Korteweg. In regard to claim 1, Korteweg discloses an enclosed applicator with an elongated body 14 with an applicator tip 16 sealed along with a fluid (see column 3, lines 45-49) within an elongated housing 12 with an opening means 30 near the tip wherein the applicator 14 and the housing 2 are "formed as a single unit" (i.e., after assembly and during use, the housing portion 18 and applicator 14 are not separated and thereby "form a single unit") and wherein when the housing is open at the opening means, the tip is exposed and the fluid may be applied by the tip. Although the Korteweg reference does not disclose the specially claimed amount or positioning of the fluid, the reference does disclose that the housing is "at least partially filled" with the fluid. Accordingly, depending on the amount of fluid in the housing and the positioning of the housing, it would be obvious to one of ordinary skill in the art at the time the invention was made that the fluid can be supplied such that a "great majority" of the fluid is disposed around the elongated body of the applicator, i.e., viewing Figure 3, should the housing be partially filled with fluid and the device is positioned such that the end 22

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is directed downwardly, than a "great majority" of the fluid would be disposed around the elongated body 14. In regard to claim 2, the opening means 30 is a breakable reduced section (see column 4, lines 5-7). In regard to claim 4, although the Korteweg reference does not disclose the claimed method of forming the applicator or the housing, the claimed phrase "formed by a blow-molding process" is being treated as a product by process limitation, that is, the applicator and housing are made by blow-molding. As set forth in MPEP 2113, product by process claims are not limited to the manipulations of the recited steps, but only to the structure implied by the steps. Once a product appearing to be substantially the same is found, a 35 UCS 102/103 rejection may be made and the burden is shifted to the Applicant to show an unobvious difference. Thus, even though the Korteweg reference does not disclose the claimed method of forming the applicator or the housing, it appears that the Korteweg device would be similar as that device claimed. In regard to claim 7, Korteweg discloses an enclosed applicator comprised of an applicator with a tip 16 affixed to one end of an elongated member 14 sealed along with a fluid "disposed mostly around" the elongated member within an elongated housing 20 with an opening means 30 positioned closer to the tip than to a second end of the elongated member 14. In regard to claim 8, the tip is made of cotton (see column 3, line 25).

Allowable Subject Matter

Claims 9-13 are allowed.

Response to Arguments

Applicant's arguments filed 3/26/07 have been fully considered but they are not persuasive. The Applicant is apparently contending that the Koretweg reference is not applicable against claim 1 in that it does not disclose a great majority of the fluid being disposed around the body of the applicator. This limitation, however, is completely dependent on the amount of fluid in the housing and the positioning of the housing. As the Korteweg reference does not limit the amount of fluid in the housing, the device (as discussed supra) can obviously be arranged such that a great majority of the fluid is disposed about the elongated body of the applicator.

Conclusion

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to the entry. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

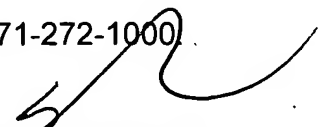
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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huson Gregory can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



David J. Walczak
Primary Examiner
Art Unit 3751

DJW